

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A.No.110(C) of 2017-18**

(From the order of the learned JCST, Jajpur Range,  
Jajpur Road in Appeal No.AA.638 KJB (C)/16-17  
dated 28.07.2017)

**P r e s e n t :**

**Shri Subrat Mohanty,  
Judicial Member.**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

... Appellant

**- V e r s u s -**

M/s.Stemcor India Pvt. Ltd.,  
Keonjhar.

... Respondent

For the Appellant

... Mr.M.S.Raman, Addl. S.C.(CT).

For the Respondent

... Mr.J.Mohanty, Advocate.

**Period of Assessment: 01.04.2012 to 31.03.2014**

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**Date of hearing: 07.09.2019    \* \* \*    Date of Order:07.09.2019**  
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**O R D E R**

The revenue has preferred this appeal against the confirming order of the first appellate authority in an assessment under Section 12(3) of the CST (O) Rules relating to assessee-dealer for the tax period 01.04.2012 to 31.03.2014 and prayed for modification of the impugned order to the extent of imposition of interest in addition to tax due.

2. The brief fact of the case is that the respondent dealer M/s.Stemcor India (P) Ltd. was subjected to audit assessment under VAT as well as under CST Act and Rules for the tax periods 2012-13 and 2013-14. The dealer was found to have effected interstate sale of iron ore and coke of Rs.1,22,30,75,335.00. He could produce

declaration form-C only to the amount of Rs.122,93,93,329.00 whose sale value is Rs.120,52,87,579.00. As such the dealer had fallen short of declaration form for an amount of Rs.1,77,87,756.00. The taxing authority did not allow the concession in rate of tax to the above extent for which the dealer failed to furnish the declaration form. Thus, in ultimate calculation the dealer was asked to pay balance tax of Rs.1,82,741.00.

3. Being aggrieved the dealer knocked the door of the first appellate authority but to his ill luck the first appellate authority, vide his impugned order, confirmed the order of the assessing authority, with the self-same reason that, in respect of extended opportunities the dealer could not produce the wanting declaration form, thereby the dealer is not entitled concessional rate of tax.

4. When the matter stood thus, the revenue has come up with this appeal praying for imposition of interest invoking Rule 8(a)(2) of the CST Rules. It is claimed that, since the dealer had failed to produce declaration form in time he was denied concessional rate of tax. In that event, the fora below should have levied interest besides differential amount of tax due.

**Findings:**

5. At the outset it is stated that the grounds in appeal such as interest should have imposed in while deleting penalty is beyond the facts involved in the case. Here the AA had not imposed penalty in the original assessment order. The FAA has not deleted any penalty so the ground is hypothetical.

6. Interest is invariably levied whenever there is non-payment of tax or delay payment of tax. The payment of tax without concession in rate of tax is a consequence for non-production of declaration Form 'C' in the case in hand. So, in that event, the taxing authority is not debarred to raise interest. In the case of **Indodan Industries Ltd. Vs. State of UP**, reported in

**[2010] 27 VST 1 (SC)**, it was held that the interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during the interregnum period and that the assessee enjoys that amount during the said period and in order to recover the lost revenue, the levy of interest is contemplated.

Adverting to the case in hand, it is to be seen, whether it is within the competency of this Tribunal in this appeal in hand to award interest for the peculiarity of the case like, the AA has not imposed penalty or interest. The FAA, which is an extended forum of assessment, has also not imposed penalty or interest. So far as the assessment is concerned, both the AA and FAA both stand on a same platform. The order of the FAA is under challenge by the Revenue. The dealer has furnished details of the treasury challan regarding payment of tax as demanded on the basis of impugned order. The dealer who was appellant before the first appellate authority has accepted the impugned order. The taxing authority also raised demand on the basis of impugned order which is duly complied by the dealer. In that event where is the scope and reason for the taxing authority to challenge the impugned order?

It is well settled that, a decree or order can be challenged in appeal by the party against whom the decree or order is passed or by the party, even though the order is passed in his favour, but the findings on any question or issue involve in this dispute is decided against him, or in the event, the order or decree passed in his favour, all the issues/questions are decided in his favour, but while deciding any question or issue, any question of fact has been wrongly decided against him, in that event also, the party has a right to prefer appeal.

Here, it is not understood how and in which way the impugned order can be subjected to appeal at the instance

of the Revenue. The first appeal was preferred by the dealer questioning the imposition of higher rate of tax. It was decided by the FAA giving relaxation in tax to the extent declaration form furnished. It was not a question before the FAA that, the dealer is liable to pay interest or not? Once, this issue is never raised or decided, then the scope in the hands of the parties in appeal to raise the question of interest does not arise. Revenue has failed to establish against which findings of FAA it is aggrieved so as to enable it to prefer appeal.

In the conclusion it is held that, when there is delay in payment of tax, interest should be levied but this question neither can be raised nor decided in this appeal at the instance of the Revenue. It is also made clear that, Revenue by raising demand on the basis of impugned order has accepted the finding of the first appellate authority. Hence the appeal is bad in law.

Accordingly, it is ordered.

7. The appeal is dismissed as of no merit with the observation hereinabove .

Dictated & corrected by me,

**(S. Mohanty)**  
**Judicial Member.**

**(S. Mohanty)**  
**Judicial Member.**